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8 UNITED STATES DISTRICT COURT
9 WESTERN DISTRICT OF WASHINGTON
10 AT TACOMA

11 CALVIN ROUSE AKA ABDUR RASHID
12 KHALIF,

13 Plaintiff,

14 v.

15 ELDON VAIL,

16 Defendant.

No. 08-5620FDB/JRC

REPORT AND RECOMMENDATION

NOTED FOR:
April 2, 2010

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18 This Civil Rights action has been referred to the undersigned Magistrate Judge pursuant
19 to Title 28 U.S.C. §§ 636 (b) (1) (A) and 636 (b) (1) (B) and Local Magistrate Judges' Rules
20 MJR 1, MJR 3, and MJR 4 (Dkt. # 4).

21 Defendants have moved for summary judgment, (Dkt. #54), and plaintiff filed a motion
22 for a temporary restraining order five days later regarding an alleged failure to receive access to a
23 law library (Dkt. # 55).

24 This Report and Recommendation addresses only the motion for a restraining order. The
25 court recommends the motion be denied because the incidents he complains of do not relate to
26 any named defendant or any issue in this litigation.

Report and Recommendation- 1

1 FACTS

2 The only remaining defendant is Eldon Vail in his official capacity. Damage claims have
3 been dismissed and the only remaining claim is for injunctive relief. The only remaining claim
4 is that application of DOC policy 400.280 is denying plaintiff his religious freedom as
5 guaranteed by the First Amendment because prison officials allegedly reject mail that is not in
6 his committed name, have opened legal mail outside his presence, and because prison officials
7 refuse to place his legal name on his prison identification badge (Dkt. # 38).
8

9 Plaintiff asks the court to enter a temporary restraining order because he argues that two
10 Washington State Penitentiary officers denied him access to courts when they would not let him
11 use the facility's law library. The exhibits to plaintiff's motion show that on December 30, 2009,
12 plaintiff approached movement control to his unit prior to movement for the law library being
13 called. He was informed that movement had not been called, but rather than returning to his cell
14 and waiting for the call he went to into the day room. By policy, once an inmate enters the day
15 room he may only leave on the next hourly gate. Therefore, plaintiff missed the library callout
16 (Dkt. # 55, page 6).
17

18 Plaintiff also complains of prison lockdowns in November and December and other
19 unspecified occasions where he has not been able to go to the law library because of "schedules,
20 holidays, fights, staff tardiness, or vacations without coverage." But, he provides no details and
21 does not show he has missed any court deadline.
22

23 STANDARD

24 The basic function of injunctive relief is to preserve the status quo ante litem pending a
25 determination of the action on the merits. Los Angeles Memorial Coliseum Com'n v. National
26 Football League, 634 F.2d 1197, 1200 (9th Cir. 1980). A party seeking injunctive relief must

1 fulfill one of two standards, the "traditional" or the "alternative." Cassim v. Bowen, 824 F.2d
2 791, 795 (9th Cir. 1987).

3 Under the traditional standard, a court may issue preliminary relief if it finds
4 that (1) the moving party will suffer irreparable injury if the relief is denied;
5 (2) the moving party will probably prevail on the merits; (3) the balance of
6 potential harm favors the moving party; and (4) the public interest favors
7 granting relief. . . . Under the alternative standard, the moving party may
8 meet its burden by demonstrating either (1) a combination of probable
9 success and the possibility of irreparable injury or (2) that serious questions
10 are raised and the balance of hardships tips sharply in its favor.

11 Id. (citations omitted).

12 DISCUSSION

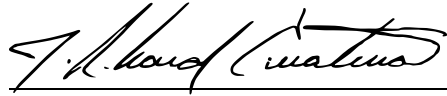
13 Plaintiff's failure to follow the rules and procedures needed to access the library
14 precludes injunctive relief. As defendant notes in his response "Running a prison is an
15 inordinately difficult undertaking . . . peculiarly within the province of the legislative and
16 executive branches of government [S]eparation of powers concerns counsel a policy of
17 judicial restraint." Turner v. Safley, 482 U.S. 78, 85 (1987) (Dkt. # 56, page 2).

18 Absent a clear constitutional violation, it is the Department of Corrections, and not the
19 courts that make decisions on the day to day operations of the facility. The public interest does
20 not favor allowing an inmate to reject or refuse to follow the rules. The court concludes that the
21 motion for a temporary restraining order should be DENIED.

22 Pursuant to 28 U.S.C. § 636(b)(1) and Rule 72(b) of the Federal Rules of Civil
23 Procedure, the parties shall have fourteen (14) days from service of this Report to file written
24 objections. See also Fed.R.Civ.P. 6. Failure to file objections will result in a waiver of those
25 objections for purposes of appeal. Thomas v. Arn, 474 U.S. 140 (1985). Accommodating the
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1 time limit imposed by Rule 72(b), the clerk is directed to set the matter for consideration on
2 **April 2, 2010**, as noted in the caption.

3 Dated this 5th day of March, 2010.
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7 J. Richard Creatura
8 United States Magistrate Judge
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